

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL EASON,
Plaintiff,

v.

JOSEPH LEHMAN,
Defendant.

Case No. C04-5845FDB

ORDER DIRECTING SERVICE BY
U.S. MARSHAL

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). In December of 2004 the court ordered plaintiff to provide service documents. In January of 2005 the documents were provided. While a notation was made in the electronic file, nothing was placed on the court's calendar that would have brought this action to the courts attention. Usually there is a date on the motion calendar that alerts the court to the fact that some action is needed in the case or that the court should check for compliance with an order. That did not occur in this case. The court apologizes to Mr. Eason for the delay in ordering service in this action. Fortunately, a request for information in the case brought the matter to the courts attention. (Dkt. # 8).

1 Plaintiff has been granted leave to proceed *in forma pauperis*. Plaintiff has provided service
2 copies and filled out service forms. The clerk is directed to send a courtesy copy of the complaint to
3 the Washington State Attorney General's Office Criminal Justice Division and, the clerk is directed
4 to effect service as provided below.

5 (1) Service by United States Marshal.

6 It is hereby ORDERED that the United States Marshal shall send the following to each
7 named defendant for whom there is a filled out service form by first class mail: a copy of the
8 complaint and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service
9 of Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed to
10 the Clerk's Office. All costs of service shall be advanced by the United States. The Clerk shall
11 assemble the necessary documents to effect service.

12 (2) Response Required

13 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service
14 of Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after
15 the date designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the
16 complaint, as permitted by Rule 12 of the Federal Rules of Civil Procedure.

17 Any defendant who fails to timely return the signed Waiver will be personally served with a
18 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule
19 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under
20 Rule 12 within **thirty (30) days** after service.

21 (3) Filing and Service by Parties, Generally.

22 All original documents and papers submitted for consideration by the court in this case, are to
23 be filed with the Clerk of this court. The originals of all such papers shall indicate in the upper right-
24 hand corner the name of the Magistrate Judge to whom the copies are to be delivered. The papers
25 shall be accompanied by proof that such documents have been served upon counsel for the opposing
26 party (or upon any party acting *pro se*). The proof shall show the day and manner of service and
27 may be written acknowledgment of service, by certificate of a member of the bar of this court, or by

1 affidavit of the person who served the papers.

2 (4) Motions.

3 Any request for court action shall be set forth in a motion, properly filed and served. The
4 motion shall include in its caption (immediately below the title of the motion) a designation of the
5 Friday upon which the motion is to be noted upon the court's calendar. That date shall be the third
6 Friday following filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs
7 and affidavits in opposition to any motion shall be filed and served not later than 4:30 p.m. on the
8 Monday immediately preceding the Friday appointed for consideration of the motion. If a party fails
9 to file and serve timely opposition to a motion, the court may deem any opposition to be without
10 merit. The party making the motion may file, not later than 4:30 p.m. on the Thursday immediately
11 preceding the Friday designated for consideration of the motion, a response to the opposing party's
12 briefs and affidavits.

13 (5) Motions for Summary Judgment

14 If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil
15 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a
16 nonmoving party to submit affidavits or other evidence in opposition to a motion for summary
17 judgment if the moving party has shown the absence of issues of material fact and an entitlement to
18 judgment as a matter of law. A nonmoving party may not rest upon the mere allegations or denials
19 of prior pleadings. Rather, successful opposition to a motion for summary judgment requires the
20 nonmoving party to set forth, through affidavits or other evidence, specific facts showing a genuine
21 issue for trial. Failure by the nonmoving party to oppose a summary judgment motion or to present
22 counter evidence could result in the Court accepting the moving party's evidence as the truth, and
23 entering final judgment in favor of the moving party without a full trial. Rand v. Rowland, 113 F.3d
24 1520 (9th Cir. 1997).

25 (6) Direct Communications with District Judge or Magistrate Judge

26 No direct communication is to take place with the District Judge or Magistrate Judge with
27 regard to this case. All relevant information and papers are to be directed to the Clerk.

1 (7) Clerk's Action

2 The Clerk is directed to send a copy of this Order and of the General Order issued by the
3 Magistrate Judges to plaintiff.

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5 DATED this 15th day of June 2005.

6 /S/ J. Kelley Arnold
7 J. Kelley Arnold
8 United States Magistrate Judge
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